

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

JEFFREY SCHULKEN AND JENNIFER  
SCHULKEN, individually and on behalf of a  
class of similarly situated individuals,

Plaintiffs,

v.

WASHINGTON MUTUAL BANK and JP  
MORGAN CHASE BANK, N.A.,

Defendants.

Case No.: 5:09-cv-02708-LHK

ORDER DENYING MOTION TO SEAL

Before the Court is Plaintiffs' administrative motion to file documents partially under seal "Mot.," ECF No. 215. The documents in question are Plaintiff's response to purported class member Donald R. Earl's objections, ECF No. 216-3, and the Declaration of Steven L. Woodrow in support thereof, ECF No. 216-4. Plaintiff has proposed redactions to both of these documents.

Historically, courts have recognized a "general right to inspect and copy public records and documents, including judicial records and documents." *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 & n. 7 (1978). Unless a particular court record is one "traditionally kept secret," a "strong presumption in favor of access" is the starting point. *Foltz v. State Farm Mutual Auto. Insurance Company*, 331 F.3d 1122, 1135 (9th Cir. 2003). A party seeking to seal a judicial record then bears the burden of overcoming this strong presumption by meeting the "compelling reasons" standard. *Id.* at 1135. That is, the party must "articulate[ ] compelling reasons supported by specific factual findings," *id.* (citing *San Jose Mercury News, Inc. v. U.S. Dist. Ct.*, 187 F.3d 1096, 1102-03 (9th

1 Cir.1999)), that outweigh the general history of access and the public policies favoring disclosure,  
 2 such as the “ ‘public interest in understanding the judicial process.’” *Hagestad*, 49 F.3d at 1434  
 3 (quoting *EEOC v. Erection Co.*, 900 F.2d 168, 170 (9th Cir. 1990)).

4 The Ninth Circuit has explained that the “strong presumption of access to judicial records  
 5 applies fully to dispositive pleadings, including motions for summary judgment and related  
 6 attachments” because “the resolution of a dispute on the merits, whether by trial or summary  
 7 judgment, is at the heart of the interest in ensuring the “public’s understanding of the judicial  
 8 process and of significant public events.” *Kamakana v. City and County of Honolulu*, 447 F.3d  
 9 1172, 1177 (9th Cir. 2006). The Ninth Circuit has also carved out an exception to the strong  
 10 presumption of openness for pre-trial, non-dispositive motions. The Ninth Circuit applies a “good  
 11 cause” showing to keep sealed records attached to non-dispositive motions. *Id.* at 1180. Thus the  
 12 Court applies a two tiered approach: “judicial records attached to dispositive motions [are treated]  
 13 differently from records attached to non-dispositive motions. Those who seek to maintain the  
 14 secrecy of documents attached to dispositive motions must meet the high threshold of showing that  
 15 ‘compelling reasons’ support secrecy” while a showing of good cause will suffice at earlier stages  
 16 of litigation. *Id.*

17 Plaintiffs have requested to file redacted versions of two documents because they  
 18 “reference certain information regarding the bank’s records of the origination of Mr. Earl’s home  
 19 equity line of Credit,” Mot. at ¶ 2, and this is “personal and confidential information of Mr. Earl.”  
 20 Mr. Earl himself has publically disclosed significant information about his home equity line of  
 21 credit, and does not appear to regard such information as private or confidential. *See* Purported  
 22 Class Member Donald R. Earl’s Objections to the Settlement Offer, ECF No. 213, at 2-4. Based on  
 23 the Court’s review of the documents, no information in these documents meets the compelling  
 24 reason standard or the lower good cause standard. Accordingly, the motion to seal is DENIED  
 25 with prejudice.

26 **IT IS SO ORDERED.**

27 Dated: November 2, 2012

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 LUCY H. KOH  
 United States District Judge